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***Via Certified Mail –  
Return Receipt Requested***

May 10, 2019

Lisa Malek-Zadeh, General Manager  
Board of Directors  
West County Wastewater District  
2910 Hilltop Drive  
Richmond, CA 94806-5238

Environmental Compliance Manager  
Plant Supervisor  
West County Wastewater District  
Water Pollution Control Plant  
2377 Garden Tract Road  
Richmond, CA 94801-1001

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution  
Control Act (Clean Water Act)**

Dear Ms. Malek-Zadeh, Members of the Board of Directors and Environmental Compliance Manager,

## **STATUTORY NOTICE**

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and/or operation of the West County Wastewater District Water Pollution Control Plant (“Plant”) and its associated sewer collection system.

River Watch hereby places West County Wastewater District (“District”), as owner and operator of the Plant and associated collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, San Francisco Bay Region, Water Quality Control Plan (“Basin Plan”), as the result of violations of the District’s National Pollution Discharge Elimination System (“NPDES”) Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in an NPDES permit define the scope of the

authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the District is in violation of the CWA by violating the terms of its NPDES permit.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the District’s operations in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB-SF”).

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with the CWA.

## **NOTICE REQUIREMENTS**

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

### **1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated**

River Watch contends the order being violated is RWQCB-SF Order No. R2-2013-0016, NPDES Permit No. CA0038539 (“NPDES Permit”). River Watch has identified specific violations of the District’s NPDES Permit including raw sewage discharges and failure to either comply with or provide evidence that the District has complied with all the terms of the NPDES Permit.

### **2. The Activity Alleged to Constitute a Violation**

River Watch contends the District has violated the Act as described below in this Notice. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

#### **A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts**

##### **i. Collection System Surface Discharges Caused By Sanitary Sewer Overflows**

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above-ground from the collection system prior to reaching the Plant, are alleged to have occurred both on the dates identified

in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports, and on the dates when no reports were filed by the District, all in violation of the CWA.

The District’s aging sewer collection system has historically experienced high inflow and infiltration (“I/I”) during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure, causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains connected to adjacent surface waters, including San Pablo Creek<sup>1</sup>, Wildcat Creek<sup>2</sup>, Rheem Creek, San Pablo Bay<sup>3</sup>, and their tributaries, as well as Hilltop Lake - all waters of the United States.

A review of the CIWQS Spill Public Report – Summary Page identifies the “Total Number of SSO locations” as **61**<sup>4</sup>, with **567,509** “Total Vol. of SSOs (gal)” discharged into the environment. Of this total volume, the District admits at least **421,052** gallons, or **74%** of the total, reached a surface water. These discharge pose both a nuisance pursuant to California Water Code § 13050(m) and an imminent and substantial endangerment to health and the environment.

A review of the CIWQS SSO Reporting Program Database specifically identifies **29** recent SSOs reported as having reached a water of the United States, identified by Event ID numbers 806547, 806556, 807917, 810045, 810119, 811087<sup>5</sup>, 811764, 814528, 816111, 816321, 818656, 818674, 819618, 824325, 824608, 828245<sup>6</sup>, 831572, 831928, 831955, 832666<sup>7</sup>, 834438, 835877, 836698, 837215, 840158, and 856207. Included in these 29 reported SSOs are the following incidents:

July 8, 2017 (Event ID #836698) – An SSO due to grease deposition began behind 3958 La Colina Road in El Sobrante. The District did not know of or attend to the spill until July 12th. In the meantime, sewage had traveled north to 4210 San Pablo Dam Road along the path of the seasonal La Colina Creek and into a drainage channel, ultimately reaching San Pablo Creek. Of this large spill, only 750 gallons were recovered, and an estimated 81,360 gallons impacted surface waters.

September 12, 2017 (Event ID #840158) – Sewage began spilling from an abandoned lateral on a hillside near San Pablo Dam Road and Interstate 80 in the San Pablo Town Center shopping center. The spill continued for 7 days before the District knew of and addressed the situation. The total spill volume was estimated at 17,640 gallons. Of the total volume, 2,500 gallons were recovered and 15,140 gallons entered a storm drain, reaching Wildcat Creek.

<sup>1</sup> San Pablo Creek is impaired for diazinon and trash under CWA § 303(d).

<sup>2</sup> Wildcat Creek is impaired for diazinon under CWA § 303(d).

<sup>3</sup> San Pablo Bay is impaired for chlordane, DDT, dieldrin, dioxin compounds (including 2,3,7,8-TCDD), furan compounds, invasive species, mercury, PCBs, dioxin-like PCBs, and selenium under CWA § 303(d).

<sup>4</sup> Some SSOs had multiple spill appearance points. In addition to those listed below, Event ID #831563 and #848627 each had two spill appearance points.

<sup>5</sup> Event ID #811087 had two spill appearance points.

<sup>6</sup> Event ID #828245 had two spill appearance points.

<sup>7</sup> Event ID #832666 had two spill appearance points.

February 13, 2019 (Event ID #856207) – During a severe storm, rainfall exceeded the capacity of the District’s collection system and multiple sewage spills took place. This spill, originating from a manhole at the intersection of Battery and Willard Streets in Richmond, released 156,000 gallons of sewage, all of which entered a drainage channel leading to San Pablo Bay.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act. Further, they are violations of NPDES Permit No. CA0038539, which states in Section III. Discharge Prohibitions: “E. Any sanitary sewer overflow that results in a discharge of untreated or partially-treated wastewater to waters of the United States is prohibited”.

ii. Inadequate Reporting of Discharges/Failure to Warn

The District has not posted any warning signs for 25 of the most recent SSOs (Event ID numbers 806547, 806556, 807917, 810045, 810119, 811087<sup>8</sup>, 811764, 814528, 816111, 816321, 818656, 818674, 819618, 824325, 824608, 828245<sup>9</sup>, 831572, 831928, 831955, 834438, 835877, 837215, 840158) which reached a surface water.

River Watch contends the District is understating the gravity of the impacts of its CWA violations by failing to post health warning signs for all SSOs which pose an imminent and substantial endangerment to health or the environment, regardless of location.

iii. Failure to Mitigate Impacts

River Watch contends the District fails to adequately mitigate the impacts of its SSOs. The District is a permittee under the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements* Order No. 2006-0003-DWQ (“Statewide WDR”) governing the operation of sanitary sewer systems. The Statewide WDR requires the District to take all feasible steps, and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and impact of the release. Most SSOs which have affected surface waters were not followed by sampling which compounds the potential threat to public health from the District’s SSOs.

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<sup>8</sup> Event ID #811087 had two spill appearance points.

<sup>9</sup> Event ID #828245 had two spill appearance points.

The EPA's "*Report to Congress on the Impacts of and Control of CSOs and SSOs*" (EPA, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous biological habitat areas exist within areas of the District's SSOs. Neighboring waterways and marshlands include sensitive areas for steelhead trout, California Ridgway's rail, and the salt marsh harvest mouse. River Watch finds no record of the District performing any analysis of the impact of its SSOs on habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies containing biological habitat from the impacts of SSOs.

B. Sewer Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by structural defects in a sewer collection system results in discharges to adjacent surface waters either directly or via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.

River Watch contends untreated or partially treated sewage is discharged from the District's collection system and equalization basins/storage ponds either directly or via hydrologically connected groundwater to surface waters including La Colina Creek, San Pablo Creek, Rheem Creek, Wildcat Creek, Hilltop Lake, and San Pablo Bay (and surrounding marshlands). Due to SSOs as well as discharges and percolation from the District's equalization basins, surface waters become contaminated with pollutants, including human pathogens. Chronic failures in the collection system and inadequate storage of wastewater pose a substantial threat to public health.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the District is a violation of its NPDES Permit and thus the CWA.

C. Creation of Pollution, Contamination, or Nuisance

As part of the treatment process at the Plant, partially treated wastewater which is not yet disinfected is stored in equalization basins. These basins are in close proximity to both San Pablo Creek and Wildcat Marsh. River Watch believes these unlined basins are percolating into nearby surface waters and wetlands, and are inadequate to handle large wet weather flows.

In February of 2017, approximately 11 million gallons of partially treated wastewater from the District's equalization basins were discharged to nearby Wildcat Marsh when a substantial storm overwhelmed the treatment and storage capacity of the Plant. This discharged water, which had not been fully treated, contained fecal contaminants and toxins posing an imminent and substantial threat to health and the environment. This unauthorized discharge was a violation of NPDES Permit No. CA0038539, Order No. R2-2013-0016, Attachment G – Regional Standard Provisions and Monitoring and Reporting Requirements, I. Other, 1., which provides: "Neither the treatment nor the discharge of pollutants shall create pollution, contamination, or nuisance as defined by California Water Code Section 13050."

#### D. Violations of Receiving Water Limitations and Impacts to Beneficial Uses

San Pablo Creek, Wildcat Creek, Rheem Creek, San Pablo Bay, and the surrounding wetland ecosystems possess numerous beneficial uses as described in the RWQCB-SF Basin Plan including providing biological habitat for sensitive and vulnerable species. SSOs, percolation, and unauthorized discharges from the District's equalization basins cause prohibited pollution by unreasonably affecting the beneficial uses of neighboring waterways.

San Pablo Creek begins in 2 sections near the city of Orinda and flows northwest, with San Pablo Reservoir as its midway point, and then through the cities of El Sobrante, San Pablo, and Richmond. Once a thriving centerpiece of life for the Ohlone natives, the Creek has experienced significant decline due to various factors including illegal dumping and industrial and urban pollution. Yet this waterway remains a beloved treasure, weaving nature through urban environments, and has benefitted from restoration efforts. The Creek and its riparian corridor are relied upon by a variety of aquatic life and shoreline habitat including the federally threatened central California coast steelhead. San Pablo Creek is listed as impaired under CWA § 303(d) for diazinon and for trash. The Basin Plan provides numerous beneficial uses for San Pablo Creek: Freshwater replenishment, fish spawning and migration, preservation of rare and endangered species, warm and cold freshwater habitat, wildlife habitat, water contact recreation, and non-contact recreation.

After a winding journey of approximately 18.7 miles, San Pablo Creek reaches the San Pablo Creek Marsh, a 300-acre wetland ecosystem where fresh water from the Creek merges with the salt water of San Pablo Bay. These wetlands are home to a great diversity of wildlife including the endangered Salt marsh harvest mouse and California Ridgway's rail (formerly California clapper rail), a federally endangered, secretive, ground-dwelling bird which lives in salty and brackish marshes. The Basin Plan recognizes the salt water marshes around the Bay's margins as highly complex and vital components of the Bay system's ecology. The beneficial uses of the saltwater wetlands at the culmination of San Pablo Creek are estuarine habitat, preservation of rare and endangered species, water contact recreation and non-contact recreation, fish spawning, and wildlife habitat.

Wildcat Creek originates east of Berkeley in Tilden Regional Park, flowing northwest, then southwest, for approximately 13.4 miles, until its culmination in Castro Creek in North Richmond, just before reaching Wildcat Marsh. At times flowing parallel to San Pablo Creek, the waters and shores of Wildcat Creek also support a diversity of life including the native coastal rainbow trout, and reintroduced populations of threatened steelhead trout. Wildcat Creek, which has endured excessive pollution, is impaired under CWA § 303(d) for the pesticide diazinon. The beneficial uses of Wildcat Creek as set forth in the Basin Plan are freshwater replenishment, warm and cold freshwater habitat, fish spawning and migration, preservation of rare and endangered species, wildlife habitat, water contact recreation and non-contact recreation.

Wildcat Marsh is a 387-acre wetlands delta formed by the mouth of Wildcat Creek as it converges with Castro Creek near the shores of San Pablo Bay. Wildcat Marsh was once part of a contiguous 2,000-acre system connected with San Pablo Creek Marsh, and is also home to many species of shoreline wildlife including the salt marsh harvest mouse, California Ridgway's rail, California black

rail (recognized as a threatened species by the state of California) and the San Pablo vole, a California species of special concern. These vulnerable species, which depend on tidal marsh habitat for their survival, are threatened by fragmentation and loss of habitat, closer encroachment of humans and pets, industrial and urban pollution including sewage spills, and predation. The Basin Plan describes the beneficial uses of the wetlands of Wildcat Creek Marsh as estuarine habitat, preservation of rare and endangered species, water contact and non-contact recreation, fish spawning, and wildlife habitat.

Rheem Creek is an urban stream beginning in El Sobrante on the western edge of the East Bay Hills, north of Wildcat and San Pablo Creeks. Rheem Creek meanders westward for approximately 3.4 miles, its watershed consisting of 4 sections; the steep terrain of the headwaters, the smaller hills and residential neighborhoods of the upper watershed, the more densely developed middle watershed which includes residential neighborhoods of San Pablo and an industrial area, and the lower watershed in North Richmond which is the flattest and least developed. Rheem Creek empties into San Pablo Bay where tidal marshlands and seasonal wetlands provide habitat for hundreds of species of fish and wildlife. While it is the smallest watershed in Contra Costa County, Rheem Creek and the tidal marshlands into which it drains are important ecological links in the baylands ecosystem. The beneficial uses of Rheem Creek as provided in the Basin Plan are warm freshwater habitat, wildlife habitat, water contact recreation and non-contact recreation.

Discharges in excess of receiving water limitations reaching the above-identified waters cause prohibited pollution by unreasonably affecting their beneficial uses. In order to protect these beneficial uses, the District is required to adhere to receiving water limitations in its NPDES Permit which states in Section V., Receiving Water Limitations, A., "The discharge shall not cause the following conditions to exist in receiving waters at any place:..." The permit then goes on to list 9 prohibitions. Section V.B. sets limitations for dissolved oxygen, dissolved sulfide, pH, and nutrients for within 1 foot of the water surface. Section V.C. states that "the discharge shall not cause a violation of any water quality standard for receiving waters adopted by the Regional Water Board or State Water Resources Control Board (State Water Board) as required by the CWA and regulations adopted thereunder."

River Watch finds insufficient information in the public record demonstrating the District has monitored for and complied with these receiving water standards. As such, River Watch is understandably concerned as to the effects of the District's surface and underground discharges on biological habitat for sensitive species in and around the diverse and already burdened and vulnerable ecosystems in the area of the Plant and the District's SSOs as well as the impacts to the beneficial uses of these waterways and wetlands.

### **3. The Person or Persons Responsible for the Alleged Violation**

The entity responsible for the alleged violations identified in this Notice is West County Wastewater District as owner and operator of the West County Wastewater District Water Pollution Control Plant and its associated collection system, as well as those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

#### **4. The Location of the Alleged Violation**

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the District which relate to its ownership and operation of the Plant and associated sewer collection system as described in this Notice.

The collection system owned and operated by the District consists of approximately 249 miles of gravity sewer, 11 miles of force main and 17 pump stations. Wastewater is conveyed to the Plant, a wastewater treatment facility located at 2377 Garden Tract Road in Richmond, Contra Costa County. The Plant serves a population of approximately 100,000 residential, commercial, industrial, and public customers within the communities of Bayview, El Sobrante, Rollingwood, San Pablo, and Tara Hills as well as portions of Pinole, northern Richmond, and some unincorporated portions of Contra Costa County. The Plant provides secondary treatment of wastewater, and has a design capacity of approximately 12.5 million per day ("mgd") in dry weather, and a hydraulic capacity of 21 mgd during wet weather.

The wastewater treatment process at the Plant involves flow equalization basins, bar screens, grit removal chamber, primary and secondary clarifiers, aeration basins with anaerobic chambers for nutrient removal, and a chlorine contact chamber. Treated wastewater from the Plant is either recycled at the Chevron refinery via the North Richmond Water Reclamation Plant or Richmond Advanced Recycled Expansion facility (both owned and operated by East Bay Municipal Utility District), or pumped to the Richmond Municipal Sewer District's Water Pollution Control Plant to be combined with effluent from the Richmond Plant. The effluent is then de-chlorinated and discharged through a deep water outfall into Central San Francisco Bay. The outfall is owned and maintained by the West County Agency, a joint powers authority between the District and the City of Richmond's Municipal Sanitary Sewer District.

#### **5. Reasonable Range of Dates During Which the Alleged Activity Occurred**

The range of dates covered by this Notice is May 4, 2014 through May 4, 2019. This Notice also includes all violations of the CWA by the District which occur during and after this Notice period up to and including the time of trial.

#### **6. The Full Name, Address, and Telephone Number of the Person Giving Notice**

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California with headquarters and main office located in Sebastopol. Its mailing address is 290 South Main Street, # 817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwater of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.



River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

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708 Gravenstein Highway N., #407  
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### RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the District and its staff to tailor remedial measures to the specific operation of the Plant and associated sewage collection system.

### CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, swimming, fishing, hiking, photography, nature walks, and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the District's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the District to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

  
Jack Silver

JS:lm

### Service List

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